

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Andrew Fletcher, #08544-058,)	C.A. No. 0:05-2453-CMC-BM
a/k/a “Boonie Fletcher,”)	
)	
Petitioner,)	
)	
v.)	OPINION and ORDER
)	
United States of America and)	
John J. LaManna, Warden,)	
)	
Respondents.)	
_____)	

This matter is before the court on Petitioner’s *pro se* petition filed pursuant to 28 U.S.C. § 2241. Petitioner seeks relief from his conviction in the Western District of North Carolina. Petitioner is currently confined at FCI – Edgefield, South Carolina.

In accordance with the court’s order of reference, 28 U.S.C. § 636(b), and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation. On January 5, 2006, the Magistrate Judge issued a Report recommending the dismissal of this Petition without prejudice and without requiring Respondents to file a Return. Petitioner’s claims are cognizable under 28 U.S.C. § 2255 and Petitioner has made no showing why the “savings clause” of § 2255 should be applicable in his case. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner filed Objections to the Report and Recommendation on January 11, 2006.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court.

See Mathews v. Weber, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and the Objections of Petitioner, the court agrees with the conclusions of the Magistrate Judge. The court accordingly adopts the Report and Recommendation as part of this order. The court finds this matter to be controlled by the Fourth Circuit Court of Appeals decision in *In re Jones*, 226 F.3d 328 (4th Cir. 2000).

In *Jones*, the Fourth Circuit held that “in a limited number of circumstances . . . § 2255 . . . is inadequate or ineffective to test the legality of the detention of federal prisoners.” *Jones, supra*, 226 F.3d at 333. The court held

§ 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner’s direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

Id. at 333-34 (emphasis added).

In the present matter, Petitioner has made no showing that his circumstance warrants the application of § 2255’s “savings clause.” Petitioner’s claims all attack the validity of his conviction,

ranging from attacks on the adequacy of jury instructions to the sufficiency of the superseding indictment. This sort of collateral attack falls into the category of claims covered by § 2255.

Petitioner's remedy lies in an application to the Fourth Circuit to file a successive petition under § 2255. This § 2241 petition is **dismissed without prejudice** and without requiring Respondents to file a return.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
January 25, 2006

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